Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF GVNW CONSULTING, INC. ON BEHALF OF ILLINOIS RURAL LOCAL EXCHANGE CARRIERS

May 25, 2018

Table of Contents

Executive Summary

I. There is No Need to Fundamentally Alter the 100 Percent Overlap Process…….3

A. The Lack of 100 Percent Overlap Findings Does Not Raise Questions About the Validity of the Current 100 Percent Overlap Process…….4
B. The Commission's Speculation as to the Reason for Non-Participation by Potential Unsubsidized Voice and Broadband Competitors in the 100 Percent Overlap Process is Not Borne Out by the Facts…….…6
C. The Carefully Balanced Policy Construct of the 2016 Order Should Not be Disturbed to Find a Solution for a Non-Existent Problem…….8
D. The Suggested Auction Mechanism is Contrary to the Commission's Own Public Policy with Respect to High-Cost Universal Service Support to Competitive Areas…….9
E. Unnecessarily Changing the Competitive Overlap Rules in Midstream Discourages Broadband Investment…….10

II. The Commission's Concern About the Burdens of the Current Process for Determining 100 Percent Competitive Overlap Can be Addressed…….10

III. There is No Reason to Believe that an Auction Process Would be Less Burdensome than the Current Overlap Processes…….12

IV. Conclusion……..13

Executive Summary

There is no need to fundamentally alter the 100 percent overlap process. Changing the competitive overlap rules per the Commission's proposal at this juncture will discourage future-proof fiber investment by the *Illinois RLECs* and the other 649 legacy rate-of-return carriers. The Commission is wisely addressing problematic areas in the current rules that create uncertainty about future levels of support and discourage investment – there is no need to then create new uncertainty by unnecessarily changing the competitive overlap process. Clearly the expectations of the Commission when adopting the rule that substantial competitive overlap was present have been objectively rebutted by the results of two biennial reviews. Changing the process to determine competitive overlap will thus not change the reality that competitive overlap is virtually nonexistent.

The Commission must take great care in administering the competitive overlap process, as it has the potential to result in the loss of support to the RLEC to the detriment of rural voice and broadband consumers. The Commission has decided to take the risks inherent in potentially eliminating support to an RLEC in exchange for minimal savings to the fund as a whole, but in assuming those risks, the Commission bears the obligation to subject the administration of the competitive overlap process to the highest level of review and analysis, and thus voluntarily assumes the burdens associated with that process.

The lack of 100 percent overlap findings does not raise questions about the validity of the current 100 percent overlap process. The Commission mistakenly implies in the *NPRM* that because it has conducted the 100 percent overlap review process twice – in 2015 and 2017 -- and found only one study area to be 100 percent overlapped by unsubsidized competitors, that the process does not work. The Commission asserts that this "likely" is due to little participation by unsubsidized competitors because of lack of incentive to participate by such competitors. The *NPRM* includes no objective support for that assertion.

The Commission's speculation as to the reason for non-participation in the 100 percent overlap process is not borne out by the facts. The 2017 100 percent competitive overlap proceeding identified thirteen study areas with potential competitive overlap. Of those thirteen study areas, the Public Notice identified the majority of those study areas as having only one or two potential unsubsidized competitors. Further, of those thirteen study areas, seven were on the preliminary determination list in the 2015 100 percent overlap process but based on information submitted to the Bureau at that time, the Commission found that competitor(s) were not offering voice and broadband to 100 percent of the locations in those study areas. That indicates that seven of the potential unsubsidized competitors had two years, from 2015 to 2017, to coordinate on proving that they provided qualifying voice and broadband service to 100 percent of the study area.

The carefully balanced policy construct of the 2016 Order should not be disturbed to find a solution for a non-existent problem. The Commission offers no compelling reason in the *NPRM* to disturb the carefully balanced construct of its 2016 *Rate of Return Reform Order* merely because it has yielded results that the Commission did not expect when adopting the 100 percent overlap rule.

Unnecessarily changing the competitive overlap rules in midstream discourages broadband investment. The auction mechanism proposed in the *NPRM* has the potential to discourage investment by funding a potentially inferior overlapping network when a quality network, increasingly reliant on future-proof fiber facilities, and built based on current rules, is already in place. RLECs would be understandably reluctant to continue investing in fiber facilities when such long-term investment could be unsupported based on an auction mechanism that would address significantly less than 100 percent of the locations in the study area.

The Commission's concern about the burdens of the current process for determining 100 percent competitive overlap can be addressed. The Chairman's rational reaction to rules which have been determined to be ineffective and burdensome has been to eliminate them. That certainly is the case with the competitive overlap rules and eliminating such rules consistent with the Chairman's philosophy about unnecessary regulation could certainly be done here. If unwilling to take that dramatic a step, the Commission could decrease the frequency of the 100 percent overlap proceedings. Alternatively, it could use a process in which an overlap challenge is initiated by a voice and broadband competitor.

There is no reason to believe that an auction process would be less burdensome than the current overlap processes. The Commission offers no evidence for its assertion that "An auction procedure is likely to be quicker and more efficient." This statement ignores the fact that an auction process would require correctly identifying areas eligible for the auction, designing an auction process, and conducting an auction, all to address the very few areas with potential overlaps, particularly since historically only one 100 percent overlap has been proven.

The Commission proposes an auction mechanism that is contrary to its own public policy with respect to high-cost universal service support to competitive areas. The Commission has established a public policy goal to make the most effective use of scarce high-cost universal service funds by establishing processes – the 100 percent overlap process and the more granular 85 percent overlap process – to ensure that no support is provided in areas in which a competitor has established that it can provide voice and broadband service meeting the Commission's standards without support. Yet it inexplicably proposes to contradict that public policy goal by providing funds via auction at the study area level for an area showing significant competitive overlap – thereby funding such areas. Paradoxically, adoption of the NPRM's auction proposal would result in 100 percent competitive overlap by the RLEC on the first day after the auction funds were awarded.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF
GVNW CONSULTING, INC.
ON BEHALF OF ILLINOIS RURAL LOCAL EXCHANGE CARRIERS

GVNW Consulting Inc. ("GVNW")[1] respectfully submits these comments on behalf of *Illinois Rural Local Exchange Carriers ("Illinois RLECs")*[2] in the above captioned proceeding.

The Notice of Proposed Rulemaking ("*NPRM*")[3] reviews the adequacy of the Connect America

[1] GVNW Consulting, Inc. is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

[2]The *Illinois RLECs* are Harrisonville Telephone Company, Waterloo, Illinois; Madison Telephone Company, Staunton, Illinois; Egyptian Telephone Cooperative Association, Steeleville, Illinois; Gridley Telephone, Gridley, Illinois; Home Telephone Co., Saint Jacob, Illinois; Grafton Telephone Co., Grafton, Illinois; and Alhambra-Grantfork Telephone Company, Alhambra, Illinois. The Illinois Independent Telephone Association, also known as the Illinois Rural Broadband Association, endorses these comments.

[3] *Connect America Fund, et al.,* WC Docket No. 10-90 *et al.,* Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking (rel. March 23, 2018) (*"NPRM."*)

Fund (CAF) support available for rate-of-return (RoR) carriers, explores various issues with respect to existing and potential A-CAM carriers, proposes a threshold level of support not subject to the budget control mechanism for legacy carriers along with their deployment obligations, and proposes other reforms -- including changing the 100 percent overlap process. The *Illinois RLECs* will focus their comments on the changes proposed in the NPRM to the 100 percent overlap process.[4]

The *Illinois RLECs* serve voice and broadband customers in rural Illinois, are regulated as legacy rate-of-return carriers (their universal service support is based on their actual costs) and are prudently investing in broadband facilities in their respective areas. In total, they serve 18,486 broadband customers in areas that include almost 35,000 locations. As they extend and improve broadband service, the *Illinois RLECs* are pushing fiber facilities deeper into their networks, which will enable them to offer broadband speeds and performance meeting the Commission's standards for those receiving high-cost universal service fund support and will allow them to add to the number of locations in which they offer speeds and performance substantially exceeding those standards.

Changing the competitive overlap rules per the Commission's proposal at this juncture will discourage this future-proof fiber investment by the *Illinois RLECs*. The Commission is wisely addressing problematic areas in the current rules that create uncertainty about future levels of support and discourage investment – there is no need to then create new uncertainty by unnecessarily changing the competitive overlap process.

The Commission must take great care in administering the competitive overlap process, as it has the potential to result in the loss of support to the RLEC to the detriment of rural voice and

[4] *Id* at ¶¶ 160 through 163.

broadband consumers. RLECs have carrier of last resort (COLR) responsibilities and a lengthy history of reliably meeting performance standards and crucially important public safety obligations. RLECs have a proven track record of technical, financial, and managerial expertise that are necessary to meet the challenge of providing voice and broadband services to rural America. A finding of unsubsidized competition relies on a one-time analysis of information submitted, some of questionable veracity, at a snapshot in time. It risks ignoring subsequent deterioration by the identified unsubsidized competitor in service, increases in rates, or even market exit to the detriment of those consumers who already previously lost the benefits of access to universal service support. RLECs historically have complied with all consumer protection, public interest, and public safety obligations expected of a universal service support recipient, including for example: (a) access to Enhanced 911 and 911 network reliability requirements; (b) Communications Assistance for Law Enforcement Act requirements; (c) USF contribution obligations; (d) call completion requirements; and (e) Customer Proprietary Network Information requirements.

The Commission has decided to take the risks inherent in potentially eliminating support to an RLEC in exchange for minimal savings to the fund as a whole, but in assuming those risks, the Commission bears the obligation to subject the administration of the competitive overlap process to the highest level of review and analysis, and thus voluntarily assumes the burdens associated with that process.

I. There is No Need to Fundamentally Alter the 100 Percent Overlap Process

The NPRM seeks comment on whether to replace the 100 percent overlap process by which it eliminates support for legacy rate-of-return study areas that are fully served by

unsubsidized carriers with a different mechanism.[5] High-cost universal service support for the study areas found to be 100 percent overlapped is frozen at the amount disbursed in the prior calendar year, and support is phased down over three years. In lieu of the current process, the NPRM asks for comment on using an auction mechanism to award support to either the incumbent LEC or the competitor(s) in areas where there is significant competitive overlap.[6]

A. The Lack of 100 Percent Overlap Findings Does Not Raise Questions About the Validity of the Current 100 Percent Overlap Process

By its very raising of review of the 100 percent overlap process, the Commission mistakenly implies in the *NPRM* that because it has conducted the 100 percent overlap review process twice and found only one study area to be 100 percent overlapped by unsubsidized competitors, that the process is ineffective. The Commission asserts that this "likely" is due to little participation by unsubsidized competitors because of lack of incentive to participate by such competitors.[7] The *NPRM* includes no objective support for that assertion. The lack of participation in the 100 percent overlap process may very likely be caused by the knowledge of competitors that they do not actually overlap the RLEC to the extent indicated by the Commission's Form 477 data.

While the Commission is correct that not all potential competitors have formally participated in the 100 percent overlap process, potential competitors have participated in an informal way. GVNW has actually worked with RLECs who initiated contact with potential competitors to solicit statements from them for use in the 100 percent competitive overlap

[5] *Id* at ¶ 160.
[6] *Id* at ¶ 162.
[7] *Id* at ¶ 161.

proceeding indicating that such competitors did not provide voice and broadband service to the extent asserted by the Commission.

The NPRM also ignores the fact, objectively proven by the Commission itself, that the trigger for the 100 percent overlap process – the information available from the 477 Forms filed by competitors, particularly fixed wireless competitors – is inaccurate, thereby unnecessarily initiating overlap proceedings where no overlap exists. The Commission should examine the Form 477 filings in 2015 and 2017 to determine the reason or reasons for the inaccurate submissions and address that problem. It should utilize all the tools at its disposal, including enforcement, to ensure that proceedings that are unnecessary and burdensome to both the Commission and the RLECs forced to respond are not triggered by inaccurate FCC 477 Forms.

Seven areas identified as 100 percent overlapped in 2015 (and determined not to be 100 percent overlapped) were identified again in 2017 and, after examination by the Commission, were again found not to be 100 percent overlapped. It is reasonable to draw the conclusion that the faulty 477 Forms submitted in those seven study areas in 2015 were not corrected, were resubmitted in 2017, and triggered proceedings in the same study areas again. The initial submission of inaccurate data is problematic and regrettable, repeating those inaccurate submissions is inexcusable.

The *NPRM* also does not contemplate the possibility that it has found an extraordinarily minimal level of 100 percent overlap by unsubsidized competitors because such overlap is virtually nonexistent. Merely because the Commission included in its 2016 Order a public policy safeguard against providing support to an area in which a competitor serves absent support, does not demonstrate that such situations actually exist beyond the one instance identified in 2015.

The Wireline Competition Bureau conducted its biennial review in 2015 and 2017 and found only one study area out of the 655 legacy rate-of-return study areas to be 100 percent overlapped by unsubsidized competitors.[8] That is less than two-tenths of one-percent of the relevant study areas.

Furthermore, knowledge gained by representation of RLECs by GVNW in alleged 100 percent overlap situations reveals a much different reason for lack of participation – the competitors know that, by themselves or in combination with one or more competitors in the RLEC's study area -- they do not completely overlap the RLEC. There is no basis for them to assert complete overlap when it does not exist and thus no opportunity to deny the RLEC in their service area universal service high-cost support. They do not want to waste their resources taking part in a proceeding in which they are destined to fail to prove 100 percent overlap. They are also understandably reluctant to have the Commission's record reflect an admission that, in some cases, their 477 Forms are inaccurate.

B. The Commission's Speculation as to the Reason for Non-Participation in the 100 Percent Overlap Process by Potential Unsubsidized Voice and Broadband Competitors is Not Borne Out by the Facts

In most, if not all of the 100 percent competitive overlap proceedings that have been conducted by the Commission, there is one entity that overlaps a majority of the study area in question. Presumably, by having the opportunity to eliminate support to its RLEC competitor, that entity would have more than sufficient incentive to take the lead in contacting other entities in the study area to determine whether 100 percent competitive overlap was present. Also, in many of the study areas identified as overlapped, there are a limited number of potential

[8] *See Connect America Fund*, WC Docket No. 10-90, Order, 30 FCC Rcd 14145 (WCB 2015); *Wireline Competition Bureau Concludes the 100 Percent Overlap Challenge Process*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 9294 (2017).

overlapping unsubsidized competitors identified by the FCC's Form 477, not an unreasonable number of entities to coordinate participation in the current biennial 100 percent overlap proceeding. The 2017 100 percent competitive overlap proceeding identified thirteen study areas with potential competitive overlap.[9] Of those thirteen study areas, the Public Notice identified the majority of those study areas as having only one or two potential unsubsidized competitors.[10] Further, the Public Notice also noted that of the thirteen study areas, seven were on the preliminary determination list in the 2015 100 percent overlap process but based on information submitted to the Bureau at that time, the Commission found that competitor(s) were not offering voice and broadband to 100 percent of the locations in those study area codes (SACs).[11] That indicates that seven of the potential unsubsidized competitors had two years, from 2015 to 2017, to coordinate on proving that they provided qualifying voice and broadband service to 100 percent of the study area. None of the thirteen study areas identified in 2017 as potentially 100 percent overlapped were identified as such after completion of the proceeding.[12] In the 2015 100 percent competitive overlap proceeding, fifteen study areas were identified as potentially overlapped.[13] Of those fifteen study areas, three had only one potential voice and broadband competitor, ten had only two potential competitors, and the remaining two study areas had three and four competitors, respectively. Thirteen of the fifteen study areas had two or fewer potential

[9] *See* Public Notice, *Wireline Competition Bureau Publishes and Requests Comment on Rate-of-Return Study Areas Potentially 100 Percent Overlapped by Unsubsidized Competitors* (WC Docket No. 10-90), (rel. August 11, 2017).

[10] *Id* at 3. The Public Notice identified two study areas as having only one potential unsubsidized competitor, five study areas with only two potential unsubsidized competitors and the remainder having between three and five potential unsubsidized competitors.

[11] *Id*.

[12] *See* Public Notice, *Wireline Competition Bureau Concludes the 100 Percent Overlap Challenge Process* (WC Docket No. 10-90), (rel. November 2, 2017).

[13] *See* Order, *In the Matter of Connect America Fund*, (WC Docket No. 10-90), (rel. December 14, 2015) at 2.

competitors. Even though seven of nineteen competitors filed comments in response to the Public Notice, only one RLEC was found to be 100 percent overlapped.[14]

C. The Carefully Balanced Policy Construct of the 2016 Order Should Not be Disturbed to Find a Solution for a Non-Existent Problem

The Commission offers no compelling reason in the NPRM to disturb the carefully balanced construct of its 2016 *Rate of Return Reform Order* merely because it has yielded results that the Commission did not expect when adopting the 100 percent overlap rule. Clearly the expectations of the Commission when adopting the rule that substantial competitive overlap was present have been objectively rebutted by the results of two biennial reviews. Changing the process to determine competitive overlap will not change the reality that competitive overlap is virtually nonexistent.

Further, the Commission already has in its rules an additional and more granular approach to competitive overlap.[15] Although unfortunately implementation of the more granular process, like the 100 percent overlap process, is triggered by a Public Notice based on FCC Form 477 data, the more granular approach also uses a challenge process. The *Illinois RLECs* believe that both competitive overlap processes applicable to rate-of-return carriers should not only *use* a challenge process but actually *be triggered* by a challenge initiated and supported by an entity asserting overlap with unsubsidized voice and broadband service meeting the Commission's requirements, not by FCC Form 477 data which has proven to be inaccurate. The FCC Form 477 trigger has forced the wasteful expenditure of time and money by the Commission and RLECs.

---

[14] *Id* at 3.

[15] *See Connect America Fund* (WC Docket No. 10-90), *ETC Annual Reports and Certifications* (WC Docket No. 14-58) and *Developing a Unified Intercarrier Compensation Regime* (CC Docket No. 01-92) *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, (rel. March 30, 2016), ("*Rate of Return Reform Order*") ¶¶ 116- 145.

The *Rate of Return Reform Order* very specifically lays out a process to determine competitive overlap and permits carriers to disaggregate support between competitive and non-competitive areas.[16] It properly lets the burden of persuasion rest on the competitor and requires evidence sufficient to show the specific geographic area in which the competitor is offering service. In the *NPRM*, the Commission asks about replacing this process with an auction when it has not fully implemented its competitive overlap processes to determine their effectiveness.

D. The Suggested Auction Mechanism is Contrary to the Commission's Own Public Policy with Respect to High-Cost Universal Service Support to Competitive Areas

The Commission proposes an auction mechanism that is contrary to its own public policy with respect to high-cost universal service support to competitive areas. The Commission has established a public policy goal to make the most effective use of scarce high-cost universal service funds by establishing processes to ensure that no support is provided in areas in which a competitor has established that it can provide voice and broadband service without support that meets the Commission's standards. Yet it proposes to contradict that public policy goal by providing funds via auction at the study area level – thereby funding areas which have competitive overlap.[17] The proposed auction process has a greater chance of funding areas with competitive overlap than the current rules. The Commission should not adopt a process to implement a policy contrary to the Commission's core policy goal of preserving scarce universal service funds. Paradoxically, adoption of the NPRM's auction proposal would result in 100 percent competitive overlap by the RLEC on the first day after the auction funds were awarded to the competitor.

---

[16] *Id* at ¶ 138.
[17] *Id* at ¶ 163.

E. Unnecessarily Changing the Competitive Overlap Rules in Midstream Discourages Broadband Investment

The Commission is wisely addressing problematic areas in the current rules that create uncertainty about future levels of support and discourage investment – there is no need to then offset that reduction in uncertainty by unnecessarily and radically changing the competitive overlap process and creating new uncertainty. The auction mechanism proposed in the *NPRM* has the potential to discourage investment by funding a potentially inferior overlapping voice and broadband network when a quality voice and broadband network, increasingly reliant on future-proof fiber facilities, and built based on current rules, is already in place. RLECs would be understandably reluctant to continue investing in fiber facilities to provide voice and broadband services (and borrowing funds to finance that investment) when such long-term investment could be unsupported based on an auction mechanism that would address significantly less than 100 percent of the locations in the study area.

II. The Commission's Concern About the Burdens of the Current Process for Determining 100 Percent Competitive Overlap Can be Addressed

Under Chairman Pai's leadership, the Commission has properly eliminated rules that it has determined are burdensome and ineffective. By noting the lack of findings of 100 percent overlap and highlighting the "challenging" nature of the process on Commission staff, the *NPRM* impliedly admits that the process it uses to administer the 100 percent overlap mechanism meets both of those criteria.[18] Yet the only alternative offered by the Commission is an auction process that could be even more burdensome on the Commission than the current process and would produce a result contrary to the Commission's public policy goal of not providing support in areas served with voice and broadband by an unsubsidized competitor.

---

[18] *Id* at ¶¶ 160-161.

The Commission's proposal for an auction process to determine support in competitive overlap situation to replace the 100 percent overlap process asks whether, if such process is focused on a percentage below 100, it should replace the competitive overlap process adopted by the Commission in the *Rate-of-Return Reform Order*.[19] It thereby leaves open the possibility of retaining the process from the *Rate-of-Return Reform Order* and adding yet another process to address what is seemingly a non-existent problem.

The funds that must be spent by RLECs to preserve their universal service high-cost support by participating in the competitive overlap process are funds that are not able to be spent on building out broadband facilities. The current process must be particularly burdensome and expensive for the seven study areas that have been targeted twice (and found both times to not have 100 percent overlap). Presumably those companies will expect to be part of the process again in 2019 and beyond.

There are other options to address both the effectiveness and burdens of the 100 percent overlap determination process. The Chairman's rational reaction to rules which have been determined to be ineffective and burdensome has been to eliminate them. That certainly is the case with the competitive overlap rules and eliminating such rules consistent with the Chairman's philosophy about unnecessary regulation could certainly be done here. If unwilling to take that dramatic a step, the Commission could decrease the frequency of the 100 percent overlap proceedings. Alternatively, it could use a process which is triggered by a challenge initiated and supported by an entity asserting overlap with unsubsidized voice and broadband service meeting the Commission's requirements, not by FCC Form 477 data which has proven to be inaccurate. This would avoid wasting the resources of Commission staff and that of RLECs

[19] *Id* at ¶ 163.

on proceedings in which the entities identified as competitively overlapping an RLEC have no interest in participating in the Commission's competitive overlap proceeding.

III. There is No Reason to Believe that an Auction Process Would be Less Burdensome than the Current Overlap Processes

The Commission evidences concern about the "challenging" nature of the current proceeding on Commission staff, yet it fails to address the potential burdens on the Commission of designing and implementing an auction process. The Commission offers no evidence for its assertion that "An auction procedure is likely to be quicker and more efficient."[20] This statement ignores the fact that this type of auction process would require correctly identifying areas eligible for the auction, designing an auction process, and conducting an auction, all to address the very few areas with potential overlaps, particularly since historically only one 100 percent overlap has been proven.

Commissioner O'Rielly recently lamented the cost of auctions and the lack of functionality of the Commission's current auction software "After spending approximately $100 million per year on our auction program, we ought to have greater flexibility and functionality when it comes to our auction procedures."[21] Given the no estimate of any potential savings to high-cost universal service funding from moving to an auction process, and the obvious expense of replacing the current process with auctions, it would appear that having the benefits of such a change exceed the costs to both the Commission and carriers would be challenging at best.

---

[20] *See NPRM* at ¶ 162.

[21] *See Remarks of FCC Commissioner Michael O'Rielly Before the American Enterprise Institute*, April 19, 2018, at 2, available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0419/DOC-350335A1.pdf, last checked April 30, 2018.

IV. Conclusion

Changing the competitive overlap rules per the Commission's *NPRM* at this juncture will discourage future-proof fiber investment by the *Illinois RLECs*. The Commission is wisely addressing problematic areas in the current rules that create uncertainty about future levels of support and discourage investment – there is no need to then create new uncertainty by unnecessarily changing the competitive overlap process.

The Commission has decided to take the risks inherent in potentially eliminating support to an RLEC in exchange for minimal savings to the fund as a whole, but in assuming those risks, the Commission bears the obligation to subject the administration of the competitive overlap process to the highest level of review and analysis, and thus voluntarily assumes the burdens associated with that process.

The Commission must take great care in administering the competitive overlap process, as it has the potential to result in the loss of support to the RLEC to the detriment of rural voice and broadband consumers. RLECs have carrier of last resort (COLR) responsibilities and a lengthy history of reliably meeting performance standards and crucially important public safety obligations. RLECs have a proven track record of technical, financial, and managerial expertise that are necessary to meet the challenge of providing voice and broadband services to rural America. A finding of unsubsidized competition relies on a one-time analysis of information submitted, some of questionable veracity, at a snapshot in time. It risks ignoring subsequent deterioration by the identified unsubsidized competitor in service, increases in rates, or even market exit to the detriment of those consumers who already previously lost the benefits of access to universal service support.

The lack of participation in the 100 percent overlap process may very likely be caused by the knowledge of competitors that they do not actually overlap the RLEC to the extent indicated by the Commission's Form 477 data. The NPRM ignores the possibility that the trigger for the 100 percent overlap process – the information available from the 477 Forms filed by competitors, particularly fixed wireless competitors – may be inaccurate, thereby unnecessarily initiating overlap proceedings where no overlap exists.

The *NPRM* also does not contemplate the possibility that it has found an extraordinarily minimal level of 100 percent overlap by unsubsidized competitors because such overlap is virtually nonexistent. Merely because the Commission included in its 2016 Order a public policy safeguard against providing support to an area in which a competitor serves absent support, does not demonstrate that such situations actually exist beyond the one instance identified in 2015.

The *NPRM* includes no objective support for the assertion that a lack of incentive to participate by such competitors is the reason that more 100 percent competitive overlap has not been found.

The Commission proposes an auction mechanism that is contrary to its own public policy with respect to high-cost universal service support to competitive areas. The Commission has established a public policy goal – to ensure that no support is provided in areas in which a competitor has established that it can provide voice and broadband service meeting the Commission's standards without support. Yet it proposes to contradict that public policy goal by providing funds via auction at the study area level – thereby funding areas which have competitive overlap.

The Commission has properly eliminated rules that it has determined are burdensome and ineffective. By noting the lack of findings of 100 percent overlap and highlighting the "challenging" nature of the process on Commission staff, the *NPRM* impliedly admits that the process it uses to administer the 100 percent overlap mechanism meets both of those criteria.[22] Yet the only alternative offered by the Commission is an auction process that could be even more burdensome on the Commission than the current process.

There are other alternatives to diminish the burdens of the current process on the Commission. It could use a process which is triggered by a challenge initiated and supported by an entity asserting overlap with unsubsidized voice and broadband service meeting the Commission's requirements, not by FCC Form 477 data which has proven to be inaccurate. As far as the effectiveness of the competitive overlap process, the Commission has not implemented the more granular portion of that process, so the effectiveness of the rules established in the *Rate-of-Return Reform Order* have not yet been fully tested.

The auction mechanism proposed in the *NPRM* has the potential to discourage investment by funding a potentially inferior overlapping network when a quality network, increasingly reliant on future-proof fiber facilities, and built based on current rules, is already in place. RLECs will be understandably reluctant to continue investing in fiber facilities when such long-term investment can be unsupported based on an auction mechanism that would address significantly less than 100 percent of the locations in the study area.

[22] *Id* at ¶¶ 160-161.

Finally, given the expense and complexity of designing and implementing an auction, there is no reason to believe that an auction process would be less burdensome than the current overlap processes.

Respectfully submitted,

/s/ David B. Cohen

David B. Cohen Esq.
Senior Policy Advisor

/s/ Jeffry H. Smith

Jeffry H. Smith
President/CEO

GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062
202-236-3947

May 25, 2018